In the Supreme Court of the United States

OCTOBER TERM, 1970

No. 1069

MICHAEL-DAVID JOSE WEIL and
STEPHEN EUGENE LOOPER, PETITIONERS

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

Petitioners were indicted in the United States District Court for the District of Arizona on two counts charging the smuggling of marijuana and other drugs, in violation of 21 U.S.C. 176a and 18 U.S.C. 545. The district court granted petitioners' pre-trial motion to suppress, finding that the search in which the drugs were discovered was not based upon probable cause and that it was not a valid border search.

On the appeal of the United States pursuant to 18 U.S.C. 3731, the court of appeals reversed (Pet. 2a-8a).

The pertinent facts, which are detailed in the opinion below, show that at about 1:00 p.m. on August 19, 1969, petitioner Looper was the sole occupant of an automobile entering the United States from Mexico at the border town of Lukeville, Arizona. Although a search of the trunk of the automobile revealed no contraband at the time of entry, petitioner's responses to certain questions aroused the suspicion of Customs agent Corley. At about 6:10 p.m. that same day, Corley was advised that the same automobile, with Looper still the sole occupant, had again crossed the border from Mexico, with no contraband found. Corley thereupon drove to a nearby road fairly close to the border; at about 7 p.m. he saw the automobile —this time with another occupant (later identified as petitioner Weil) in addition to petitioner. The agent stopped the car because he "felt that they had picked up something on [the road] and one person had illegally entered the United States" (Pet. 5a). The agent received no response when he asked Weil where and when he had entered the United States. A search of the trunk disclosed additional suitcases not seen there before which contained marihuana and other contraband drugs.

Petitioner contends that, in the absence of a finding of probable cause below, the search of the automobile violated the Fourth Amendment (1) because it was not properly a "border search" within the proper meaning of 19 U.S.C. 482, which permits

such searches on suspicion of contraband (see Pet. 6a-7a) and (2) because in any event the Customs agent had no reason to suspect that the vehicle contained contraband. These contentions are without substance; the circumstances that the court of appeals' opinion describes in some detail plainly support its conclusion that the agent had grounds for suspicion that Weil had come across the border in the isolated area from which the car was seen emerging, and that he had brought something with him; when petitioners opened the car's trunk upon request, it became "reasonably certain" that the two additional suitcases found there had come with him (Pet. 8a). The rule suggested by petitioners as to the need for continuous surveillance has not been adopted by any circuit and was properly rejected below. See, *e.g.*, *Walker* v. *United States*, 404 F.2d 900, 901 (C.A. 5). In this case the proximity to an isolated border area, together with all the suspicious circumstances, justified treating this search as a border search under 19 U.S.C. 482.

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

ERWIN N. GRISWOLD,
Solicitor General.

JANUARY 1971.

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